

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE ENRIQUEZ, individually and on behalf of
other persons similarly situated who were
employed by CHERRY HILL MARKET CORP.
and/or CHERRY HILL GOURMET, INC.
and/or DAVID ISAEV or any other entities
affiliated with or controlled by CHERRY HILL
MARKET CORP. and/or CHERRY HILL
GOURMET, INC. and DAVID ISAEV,

Plaintiffs,
-against-

MEMORANDUM AND ORDER
Case No. 10-CV-5616 (FB) (MDG)

CHERRY HILL MARKET CORP. and CHERRY
HILL GOURMET, INC. and DAVID ISAEV
and/or any other entities affiliated with or
controlled by CHERRY HILL MARKET CORP.
and/or CHERRY HILL GOURMET, INC.
and/or DAVID ISAEV,

Defendants.

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BLOCK, Senior District Judge:

On October 22, 2012, Magistrate Judge Go issued a report and recommendation ("R&R") recommending that the Fair Labor Standards Act ("FLSA") claims of opt-in plaintiffs Emilio Yax Lopez, Salomon Castillo and Rosalyn Chavajay be dismissed due to those plaintiffs' failure to participate in discovery. The R&R recited that "[a]ny objections must be filed . . . by November 8, 2012," and that "[f]ailure to file objections within the specified time waives the right to appeal." R&R at 7. Plaintiffs' counsel received electronic notice of the R&R. To date, no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there

are no objections, the Court may adopt the R&R without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object, however, and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. See *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

The R&R contains no error, let alone plain error. Accordingly, the Court adopts it without *de novo* review.

SO ORDERED.

FREDERIC BLOCK
Senior United States District Judge

December 20, 2012
Brooklyn, New York